IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2007

CORAM

THE HONOURABLE MR.JUSTICE V.DHANAPALAN

W.P.No.31399 of 2003

K.C.Subbiah ... Petitioner

vs.

1. Indian Bank,
rep. by its Chairman &
Managing Director,
66, Rajaji Salai,
Chennai 600 001.

2. The Assistant General Manager &
Disciplinary Authority,
Indian Bank Circle Office,
Tirunelveli. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of ceriorarified mandamus to quash the order of the second respondent bearing proceedings No.CO:TNY:VG:376:03 dated 28.10.2003 and for a consequential direction to the respondents to reinstate the petitioner back in the services of the respondent Bank with full back-wages, continuity of service and all other monetary and other attendant benefits.

For Petitioner : Mr.M.Rangarajulu

For Respondents : Mr.G.Venkataraman
for M/s.Aiyar and Dolia

O R D E R

This writ petition has been filed praying to quash the order of the second respondent bearing proceedings No.CO:TNY:VG:376:03 dated 28.10.2003 and for a consequential direction to the respondents to reinstate the petitioner back in the services of the respondent Bank with full back-wages, continuity of service and all other monetary and other attendant benefits.

2. The brief facts leading to the filing of this writ petition are as follows :

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(i) The petitioner joined the services of the respondent bank as Clerk-cum-Cashier at Kancheepuram Branch on 24.07.1978 and after serving in various branches in Chennai, he was transferred to South Car Street Branch at Sankarankoil in August 1991 which Branch has since been merged with the Sankarankoil Main Branch. On 04.05.2000, the then Zonal Manager, Trichy and Disciplinary Authority issued a Show Cause notice to the petitioner and simultaneously placed him under suspension with immediate effect alleging certain acts of misconduct.

(ii) The petitioner submitted his explanation on 03.06.2000 to the show cause notice, denying the two allegations contained therein. The Zonal Manager and Disciplinary Authority issued a Charge Sheet dated 13.07.2000, containing two charges and classifying the same under Clause 19.5 (j) of the Bi-partite Settlement dated 19.10.1966, stating that the petitioner committed an act prejudicial to the interest of the Bank and ordered Departmental Enquiry on those charges.

(iii) The Departmental Enquiry proceedings against the petitioner on those charges were held starting from 29.11.2000 and continued for a year and concluded on 05.10.2001 at the Sankarankoil Main Branch. On 27.10.2001, the Presenting Officer submitted his written arguments and on 26.12.2001, the Defence representative submitted his written arguments. The Enquiry Officer gave his findings on 20.01.2002 and the Disciplinary Authority, by his letter dated 07.02.2002, forwarded a copy of the findings to the petitioner, calling upon him to submit his comments on the findings and the same was complied with promptly by the petitioner. Thereafter, between March 2002 and October 2003, for over 18 months nothing transpired and the petitioner continued to languish under the unwarranted suspension inflicted upon him since May 2000.

(iv) Though the Disciplinary Authority received the Enquiry Officer's findings on the enquiry proceedings in January 2002, he failed to take steps to reinstate the petitioner in the services of the Bank and after 18 months, he ordered a fresh enquiry for the second time on the same set of charges contained in the charge sheet dated 13.07.2000.

(v) In the enquiry held earlier, as many as 5 witnesses were examined and 18 documents were marked on behalf of the management and Exs.1 to 11 were marked on the side of the petitioner. Out of 5 management witnesses, 4 are Bank Officials and only one is an outside witness. In the enquiry, none of the management witnesses complained against the

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conduct of the Observer in the enquiry. According to the petitioner, the action of the Disciplinary Authority in ordering second enquiry on the very same charges on which an enquiry had already been conducted and the report of the Enquiry Officer submitted 1 ½ years ago, is against the principles of natural justice and there is no provision in the Bi-partite Settlement governing the service conditions of the petitioner for conducting a second enquiry on the same set of charges, on which an enquiry has already been held.

Aggrieved by the impugned order of the second respondent, the petitioner has approached this Court for effective remedy, as stated above.

3. The second respondent has filed counter contending that:

a. during the pendency of the writ petition, the petitioner, by letter dated 20.11.2006, accepted the charges pertaining to proceedings bearing Ref.CO/TNY/VG/376/03, dated 28.10.2003 and he is voluntarily and unconditionally prepared to accept any punishment other than Discharge/Dismissal under Clause 12(e) of the Bi-partite Settlement, dated 10.04.2002;

b. though the Disciplinary Authority was willing to accept the admission of guilt by the petitioner in respect of the impugned proceedings and impose appropriate punishment therefor, he could not do so, since the petitioner wanted dropping of proceedings in respect of which he had committed grave misconduct, which has nothing to do with the impugned proceedings; and

c. the Bank is willing to accept the letter of voluntary admission dated 20.11.2006, insofar as it pertains to the proceedings, which is impugned in the present writ petition and award appropriate punishment other than Discharge/Dismissal as represented by the petitioner.

4. In the rejoinder to the counter filed by the second respondent, the petitioner has stated that:

a. the Indian Bank Employees' Union has been persistently demanding from the management for the restoration of full pay as subsistence allowance to him, which was unjustifiably reduced to half pay, since he had obtained an order of stay in this case; and

b. the Union has also placed before the Bank, an alternative remedy, that instead of paying full pay under subsistence allowance and keeping the petitioner under continued suspension, the services of the petitioner could be utilized by reinstating him back in the services of the Bank,

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so that the Bank gets the benefit of his work for the pay; but, the management was reluctant because of the pendency of another Show Cause Notice No.379/03, dated 28.10.2003 and the pendency of the writ petition with regard to the first charge sheet filed by the petitioner.

5. The petitioner, in his rejoinder, has further stated that the Union and the Management came to a mutual understanding and took the following decisions :

(i) The petitioner has to submit a request under 12(e) accepting the charges unconditionally in respect of both matters;

(ii) The writ petition in W.P.No.31399 of 2003 filed by the petitioner shall be withdrawn;

(iii) The petitioner will be reinstated in the services with full pay and further proceedings will be dropped in regard to both matters; and

(iv) the petitioner shall be liable for punishment as contemplated under 12.(e).

6. The petitioner has further stated in his rejoinder that:

a. he submitted a letter dated 20.11.2006 to the Disciplinary Authority requesting him to dispense with the enquiry in respect of both the matters, enabling him to comply with the decisions jointly taken by the Union and the Bank; and

b. his admission of guilt in the letter dated 20.11.2006 cannot be used against him in the writ petition and pleaded for necessary orders.

7. In the reply to the rejoinder filed by the petitioner, the respondent Bank has stated that the show cause notice dated 28.10.2003 was never the subject matter of any discussion or negotiation between the respondent Bank and Federation of Indian Bank Employees' Union of which the petitioner is a member and the petitioner's allegation that the respondent Bank has not brought to the notice of this Court their letter dated 26.12.2006, is not correct.

8. Heard Mr.M.Rangarajulu, learned counsel appearing on behalf of the petitioner and Mr.G.Venkataraman, learned counsel appearing on behalf of the respondents.

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9. The learned counsel for the petitioner vehemently put forth his arguments that the impugned order of the second respondent suffers from error of law apparent on the face of record and lack of jurisdiction, as there is no provision in the service conditions laid down in Bi-partite settlement empowering the respondents to order second enquiry. In support of this contention, he has relied on a decision reported in 2003 (2) LLJ 557 in the case of Union of India vs. K.D.Pandey, wherein, the Supreme Court has categorically held that there cannot be an enquiry after enquiry, especially after the receipt of the Enquiry Officer's report and such a second enquiry on the same set of charges would be invalid in law.

10. He has further contended that the impugned order also suffers from laches, since the second respondent has ordered second enquiry after a period of 18 months from the date of receipt of findings of the Enquiry Officer. It was his further contention that scrapping the first enquiry and ordering a fresh enquiry after a lapse of 18 months affects the petitioner prejudicially, as he is not in a position to effectively cross-examine the management witnesses with regard to the incidents that happened in the year 1996.

11. In support of his contentions, the learned counsel for the petitioner relied on the following decisions :

(i) In (2002) 10 SCC 471 in the case of Union of India vs. K.D. Pandey and another, the Honourable Supreme Court has held as follows :

> "5. Learned Counsel for the appellant contended that in this case, the Board had examined the material on record and come to the conclusion that four of the six charges could be proved on the available material, which had not been properly examined in the earlier enquiry. In fact from the order made by the Railway Board as well as from that part of the file where the inquiry report made earlier is discussed, it is clear that specific findings have been given in respect of each of the charges after discussing the matter and, if that is so, we fail to understand as to how there could have been a remit to the inquiry authority for further inquiry. Indeed this resulted in second inquiry and non in a further inquiry on the same set of charges and the material on record. If this process is allowed the inquiries can go on perpetually until the view of the inquiry authority is in accord with that of the disciplinary authority and it would be abuse of the process of law. In that view of the matter, we thinck that the order made by the High Court affirming the order of the Tribunal is just and proper and, therefore, we decline to interfere with the same. "

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(ii) The Supreme Court in (2005) 6 SCC 636 in the case of P.V.Mahadevan vs. MD.T.N.Housing Board, has held as follows :

> "11. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer. "

12. Per contra, the learned counsel for the respondents has submitted that the petitioner had sought dropping of proceedings dated 28.10.2003, which was a show cause notice issued to him for having committed grave misconducts. He has further submitted that the respondent Bank is willing to accept the letter of voluntary admission, dated 20.11.2006, insofar as it pertains to the proceedings which is impugned in the present writ petition. To defend his case, he has placed reliance on a decision reported in AIR 1998 SC 2713 in the case of Punjab National Bank and others vs. Kunj Behari Misra, wherein the Honourable Supreme Court has held as follows :

> "7. Action on the inquiry report :
>
> (i) The Disciplinary Authority, if it is not itself the Inquiring Authority may, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority for fresh or further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of Regulation 6 as far as may be.
>
> (ii) The Disciplinary Authority shall, if it disagrees with the findings of the Inquiring Authority on

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any article of charge, records its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(iii) If the Disciplinary Authority having regard to its finding on all or any of the penalties specified in Regulation 4 should be imposed on the officer employee it shall, notwithstanding anything contained in Regulation 8, make an order imposing such penalty.

(iv) If the Disciplinary Authority having regard to its finding on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the officer employee concerned.

A bare reading of the above Regulations shows that on furnishing of the charge-sheet full opportunity is required to be given to the delinquent officer to prove his innocence. This is a case where the disciplinary authority decided that procedure contained in Regulation 6 be followed. Under Regulation 6(2) the Disciplinary Authority, instead of conducting the inquiry itself, chose to appoint another person as the 'Inquiring Authority' to inquire into the imputations of misconduct. On the conclusion of the proceedings in the manner provided by Regulation 6, the inquiring authority has to forward its report to the disciplinary authority along with all relevant records. The said report has to contain the inquiring authority's findings on each of the charges framed against the delinquent officer. According to sub-regulation (3) of Regulation 7 of the disciplinary authority, having regard to the findings on all or any of the articles of charge, imposes any of the penalties specified in Regulation 4. This obviously implies that where the inquiring authority has found all or any of the charges proved against the delinquent officer and the disciplinary authority agrees with the said findings, then it can proceed to impose any of the penalties specified in the said Regulation.

18. Under Regulation 6, the inquiry proceedings can be conducted either by an inquiry officer or by the disciplinary authority itself. When the inquiry is conducted by the inquiry officer his report is not final or conclusive and the disciplinary proceedings to do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the

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disciplinary authority itself holds an inquiry an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in Karunakar's case (1994 AIR SCW 1050)."

13. I have carefully considered the submissions made by the learned counsel on either side and have also perused the records placed before this Court.

14. Admittedly, the petitioner joined the services of Indian Bank as Clerk-cum-Cashier at Kancheepuram on 24.07.1978 and after serving in various branches in Chennai, he was transferred to South Car Street Branch at Sankarankoil in August 1991 and had been working in that branch which was thereafter merged with Sankarankoil Main Branch. On 04.05.2000, the then Zonal Manager, Trichy and Disciplinary Authority issued a show cause notice to the petitioner and simultaneously placed him under suspension with immediate effect, for certain acts of misconduct.

15. The petitioner submitted his explanation to the show cause notice on 03.06.2000, denying the allegations stated therein. Thereafter, a charge sheet was issued on 13.07.2000 by the then Zonal Manager and Disciplinary Authority, Trichy, ordering conduct of a Departmental Enquiry on the following charges:

> "... 3. Thus, by prevailing upon the borrower, purported supplier of the goods to the said borrower, and with the connivance of the Branch Manager Mr.N.Marudappamoorthy, you gained monetary advantage fraudulently by deceiving the bank and also caused misuse of a loan facility granted to a borrower.
>
> 4. Mr.N.Marudappamoorthy, the then Manager of your branch, during his tenure at your branch, had resorted to unfair practice of window dressing of deposit figures. Though you were aware of his such unfair practice, you

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failed to apprise this matter of serious importance to your higher authorities. "

16. It is seen that the departmental enquiry proceedings were held against the petitioner on the above said charges from 29.11.2000 and the proceedings continued for a year and concluded on 05.10.2001. On 27.10.2001, the Presenting Officer submitted his written arguments and on 26.12.2001, the Defence representative submitted his written arguments. It is further seen that the Enquiry Officer gave his findings on 20.01.2002 and the Disciplinary Authority, by his letter dated 07.02.2002, forwarded a copy of the same to the petitioner on 07.02.2002 itself for which the petitioner submitted his comments promptly. Since nothing transpired between March 2002 and October 2003, i.e. for a period of over 18 months, the petitioner had to languish under the unwarranted suspension inflicted upon him. While that being the position, the second respondent passed an order dated 28.10.2003 ordering fresh enquiry on the same set of charges and the same is challenged in this writ petition.

17. A careful reading of the findings of the Enquiry Officer would reveal that the first charge levelled against the petitioner that with the connivance of the Branch Manager, N.Marudappamoorthy, he had gained monetary advantage fraudulently and also caused misuse of a loan facility granted to a borrower, is not proved and he is not held guilty. With regard to the second charge that the petitioner, though aware of the unfair practice of window dressing of deposit figures resorted by N.Marudappamoorthy, the then Manager of the South Car Street branch, has failed to apprise the matter of serious importance to his higher authorities, the petitioner was held guilty of the same. According to the respondent Bank, the second charge levelled against the petitioner is an act of gross misconduct under clause 19.5(j) of the Bi-partite Settlement dated 19.10.1966.

18. At this stage, it would be useful to refer to the impugned order dated 28.10.2003 passed by the second respondent, as extracted hereunder:

"The enquiry conducted earlier is found defective for the following reason:

From the proceedings of the enquiry it is observed that Mr.S.S.Ramesh, Asst. Secretary of the union, who was allowed as an observer in the enquiry and who was not in any way connected with the case, was allowed by the EO to roam freely with access to the Enquiry Proceedings when they were being conducted and as such the witnesses and the records were allowed to be tampered by him. Findings

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based on such an evidence necessarily tend to be vitiated and cannot be construed as fair, reasonable and just. Hence the enquiry is ordered afresh to conduct the same in a free and fair atmosphere."

19. A reading of the impugned proceedings would reveal that the second enquiry has been ordered against the petitioner since the Management has observed that one S.S.Ramesh, Asst. Secretary of the Union had free access to the Enquiry proceedings and as such, the witnesses and records were allowed to be tampered by him.

20. While deciding the case on hand, it is worth referring to the decisions of the Supreme Court reported in (i) 2003 (2) LLJ 557 in the case of Union of India vs. K.D.Pandey, wherein it is held that there cannot be an enquiry after enquiry, especially after the receipt of the Enquiry Officer's report and such a second enquiry on the same set of charges would be invalid in law and (ii) (2005) 6 SCC 636 in the case of P.V.Mahadevan vs. M.D.TN.Housing Board, wherein it is held that a protracted disciplinary enquiry against a Government employee, should, therefore, be avoided not only in the interests of the Government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employee.

21. In the instant case, no proper reason is assigned by the Disciplinary Authority for keeping the Enquiry Officer's findings pending for over 18 months, despite the fact the Enquiry proceedings were concluded on 20.01.2002 and the reason assigned by the Disciplinary Authority for ordering second enquiry that the Assistant Secretary of the Union, had access to the Enquiry Proceedings and that he would tamper the witnesses and records, is not believable. Though the respondent Bank has relied on the Bi-partite Settlement dated 19.10.1966 under clause 19.5(j) for framing the charges, there is no provision in the Bi-partite Settlement to order second enquiry on the same set of charges after the receipt of the Enquiry Officer's findings.

22. In my considered opinion, though this Court, in normal circumstances, would not act as an appellate authority on the Disciplinary Authority's order for conducting fresh enquiry, this being a case of peculiar nature, this Court is inclined to set aside the impugned proceedings for the following reasons :

(a) even after the receipt of the Enquiry Officer's findings on 20.01.2002, the Disciplinary Authority has not taken any action on the same and has kept the matter pending for more than 18 months;

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(b) when the first charge levelled against the petitioner is not proved and the second charge is proved, the Disciplinary Authority could have taken action against the petitioner based on the findings, but has failed to do so; and

(c) even according to the Bi-partite Settlement, there is no provision for ordering a second enquiry on the same set of charges.

23. The above discussion would go to show that no justifiable reason is assigned by the Disciplinary Authority in keeping the Enquiry Officer's findings pending for 18 months and the reason assigned by the Disciplinary Authority in ordering a second enquiry is not bona fide and it is undoubtedly clear that the impugned order dated 28.10.2003 is hit by laches. Secondly, while the finding of the Enquiry Officer with regard to one charge is not proved, his finding as regards the other charge is proved. Thirdly, there is no provision whatsoever in the Bi-partite Settlement dated 19.10.1966 with regard to ordering second enquiry. In view of these reasons, this Court has no hesitation in setting aside the impugned order dated 28.10.2003 passed by the second respondent and accordingly, it is set aside and the second respondent, the Disciplinary Authority, is directed to take appropriate steps based on the Enquiry Officer's findings dated 20.01.2002 on the charges levelled against the petitioner, within a period of 12 weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition stands allowed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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Copy to :

1. The Chairman & Managing Director
   Indian Bank, 66, Rajaji Salai, Chennai 600 001

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2. The Assistant General Manager & Disciplinary Authority
Indian Bank, Circle Office, Tirunelveli

1 cc to M/s. Aiyar and Dolia, SR. 67717
1 cc to Mr.M. Rangarajalu, Advocate, sr. 67907

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